

SERVED: May 13, 1999

NTSB Order No. EA-4765

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11th day of May, 1999

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| JANE F. GARVEY,                  |  | ) |                 |
| Administrator,                   |  | ) |                 |
| Federal Aviation Administration, |  | ) |                 |
|                                  |  | ) |                 |
| Complainant,                     |  | ) |                 |
|                                  |  | ) | Docket SE-15248 |
| v.                               |  | ) |                 |
|                                  |  | ) |                 |
| THOMAS W. CARTER,                |  | ) |                 |
|                                  |  | ) |                 |
| Respondent.                      |  | ) |                 |
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**OPINION AND ORDER**

The Administrator has appealed the written initial decision and order issued by Administrative Law Judge William A. Pope, II, on December 23, 1998.<sup>1</sup> In that decision, the law judge affirmed the Administrator's factual allegations contained in an Emergency Order of Revocation, but modified the sanction to a 210-day suspension of respondent's airline transport pilot certificate. The only issue in this appeal is the appropriateness of that

<sup>1</sup>A copy of the written initial decision and order and January 8, 1999 Errata are attached.

sanction modification. For the reasons that follow, the Administrator's appeal is granted, and the revocation of respondent's airline transport pilot certificate is reinstated.

The record establishes that on October 31, 1997, respondent was the pilot in command of Air Jamaica flight 26 from Miami, Florida, to Kingston, Jamaica. Respondent was at the time also serving as check airman for Captain Lowrey, who was fulfilling his initial operating experience requirement for that aircraft. Respondent has over 27,000 hours and Captain Lowrey has over 14,000 hours of flying experience.

During the en route climb to flight level 330, the aircraft's speed decreased to 172 knots, a point where the aircraft could no longer be controlled.<sup>2</sup> The aircraft neared a stall condition and the aircraft lost approximately 7,000 feet of altitude in approximately 80 seconds. Captain Lowrey, following standard procedures for stall recovery, applied maximum thrust by pushing the throttle forward. This recovery action caused the engine temperature limitations to be exceeded. Neither respondent nor Captain Lowrey reported the incident to Air Jamaica, nor did they enter a report into the appropriate aircraft logbook.

An Air Jamaica captain who was riding in the passenger cabin at the time of the incident testified,

The aircraft started a very light shaking, and then it started shaking a little more violently and really started shaking, and the passengers started screaming and praying, and some were cursing. The panels on the side of the

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<sup>2</sup>Stall speed is 174 knots.

airplane and the bins had raised, and the airplane started to really get violent and shaking and shaking and shaking, and the people, the poor passengers -- I'm sorry -- the passengers -- they were -- they were -- they were crying, they were praying, they were screaming, and they were cursing....The airplane then seemed to turn to the left, the nose went down, and very rapidly the sound, the shaking, the violent shaking stopped, but not stopped, it started rolling back towards the rear of the airplane, and ... then it went smooth and quiet....(TR at 196-197).

The witness described the remainder of the flight as normal. As soon as the aircraft landed, he reported the incident to the Chief Flight Instructor. Respondent and Captain Lowrey had already departed in the same aircraft to Grand Cayman.

Respondent was approached by Air Jamaica officials on his return to Kingston. He at first denied that an unusual incident had occurred, but he then claimed there had been only a pressurization problem.<sup>3</sup> Pending further investigation by the carrier, the aircraft was operated on 13 more flights, carrying another 3,000 passengers. When the incident was later confirmed by a reading of the aircraft's flight data recorder (FDR), a report was made to the engine manufacturer, Pratt and Whitney. The aircraft was immediately grounded and both engines had to be removed and replaced.<sup>4</sup> Respondent and Captain Lowrey were both fired by Air Jamaica.

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<sup>3</sup>Both respondent and Captain Lowrey testified that they did not know that the aircraft had approached a stall. The law judge made a credibility determination against them.

<sup>4</sup>The aircraft manual requires boroscope inspection when the engine temperature exceeds 630 degrees, and disassembly and inspection when the temperature exceeds 640 degrees. According to the FDR, the engines in this aircraft exceeded temperatures of 672 degrees and 678 degrees.

The Administrator's Emergency Order of Revocation alleged that respondent violated sections 91.13, 91.703(a)(1), 91.703(a)(2), and 129.11 of the Federal Aviation Regulations (FAR), 14 CFR Parts 91 and 129, because of his failure to report the incident to the carrier, and because his careless and reckless conduct endangered the lives of the passengers. The law judge found that the allegations were supported by the evidence.<sup>5</sup> He apparently agreed with the Administrator that respondent's conduct was very serious. Nevertheless, he found, respondent's conduct did "not rise to the level of lack of qualification." (Written Initial Decision at 12). The law judge determined that a 210-day suspension of respondent's ATP would be more "appropriate." He apparently arrived at this figure by adding up the maximum sanctions suggested for what he viewed as similar violations, in FAA Order 2150.3A, Compliance & Enforcement Program, Appendix 4, the Administrator's Sanction Guidance Table.<sup>6</sup>

The Administrator asserts that the law judge's modification of sanction was erroneous. We agree. Respondent's actions reveal not just a disingenuous, unlawful effort to escape accountability for carelessness that almost had calamitous consequences, but also a callous indifference to the safety of

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<sup>5</sup>He dismissed FAR section 91.13 because it was duplicative of the remaining allegations, which applied to operation of foreign air carriers.

<sup>6</sup>The law judge referred to the Sanction Guidance Table in his decision, although it was neither discussed nor offered into evidence at the hearing.

the many passengers who subsequently flew in an aircraft he should have insisted be first inspected to insure its continued airworthiness. Such conduct amply supports the Administrator's determination that respondent lacks the care, judgment, and responsibility to hold an airline transport pilot certificate.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted;
2. The law judge's written initial decision is affirmed, except on the issue of sanction, which is set aside; and
3. The Administrator's Order of Revocation is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.